

NONREIMBURSABLE SPACE ACT AGREEMENT
BETWEEN
THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

AND RFC MEDIA, LLC
FOR CONTINUED OUTREACH COLLABORATION ON THIRD ROCK RADIO

ARTICLE 1. AUTHORITY AND PARTIES

In accordance with the National Aeronautics and Space Act (51 U.S.C. § 20113(e)), this Agreement is entered into by the National Aeronautics and Space Administration, located at 300 E Street SW, Washington, DC 20546 (hereinafter referred to as "NASA") and RFC MEDIA, LLC located at 4544 Post Oak Blvd, Suite 333, Houston, TX 77027-000 (hereinafter referred to as "Partner" or "RFC Media"). NASA and Partner may be individually referred to as a "Party" and collectively referred to as the "Parties."

ARTICLE 2. PURPOSE

NASA and RFC Media, LLC, wish to continue collaboration on a custom-produced, private network radio station called "3rd Rock Radio" that would be delivered by the Internet and mobile device applications. The station will run 24 hours, seven days per week, and will contain content about NASA programs and projects programmed together with music targeted especially to 18-34 year olds.

3rd Rock Radio will be accessible from multiple streaming points. 3rd Rock Radio will be accessible by clicking through nasa.gov to access the 3rd Rock Radio landing page and digital media player hosted by the provider and producer, RFC Media. At NASA's discretion, 3rd Rock Radio will stream continuously from the TV/Radio tab of the NASA mobile application. The station will also stream continuously from its landing page at www.thirdrockradio.net and will be prominently featured in the streaming directory at TuneIn (currently serving an estimated 60 million active monthly users worldwide) and will be available through the radio tab of Apple's iTunes.

ARTICLE 3. RESPONSIBILITIES

NASA will use reasonable efforts to:

1. Provide content about NASA programs and projects to the Partner to repurpose for the radio format and the target audience. This content could include, but is not limited to, talking points and previously-produced media.
2. Assign an Information Coordinator as liaison between NASA and the Partner to manage the flow of content, talking points, and suggestions for display and scheduling.

4. When possible, provide pre-recorded audio in MP3 format from NASA experts, scientists and other personalities to showcase related science and technology stories of interest.
5. Provide a link and/or icon for 3rd Rock Radio on the nasa.gov home page, and in other online locations deemed appropriate by NASA and where NASA has control.
Note: 3rd Rock Radio does not reside on or stream from nasa.gov. The programming originates with the Partner and is streamed online by a specialty provider of high-volume Internet audio streaming services (such as STREAM GUYS.com.)
6. Incorporate 3rd Rock Radio in on-going media strategy as appropriate in NASA's discretion.

RFC Media will use reasonable efforts to:

1. Partner will design, produce and execute a custom music and information station, hosted by "presenters" and streamed live from an independent website, via a pop-up player, created and maintained by the Partner, and accessible through links from www.nasa.gov, iTunes, TuneIn and other family-friendly online locations as appropriate to generate a wide dissemination of the content. This station would operate 24 hours per day, 7 days per week.
2. Partner will script and produce NASA news breaks in a style to appeal to the target audience. These breaks would be in 15 second, 30 second and 60 second length news features as mutually agreed upon. Content would be drawn from a variety of sources to include stories reported on nasa.gov, science and technology news from commercial space industry partners and features on the physical sciences sourced from the best-known innovators in technology and education, including NASA's university partners.
3. Partner will manage all the production elements of 3rd Rock Radio, including but not limited to, programming of the music and scheduling content elements, and providing voice talent or producing supplied voice tracks from NASA experts, representatives and celebrity hosts. Partner will obtain and maintain all licenses and releases necessary to broadcast any program elements not specifically produced and provided by NASA, and agrees to indemnify NASA for any third-party claims of copyright infringement, or violation of rights of privacy or publicity, arising from use of any such program elements not specifically produced and provided by NASA. Long format programs such as special features, weekly round table discussions or other available content may also be accommodated at NASA's discretion.
4. Partner will satisfy any and all music licensing obligations connected with the music streamed over the Internet.
5. Partner will stream 3rd Rock Radio at a bit rate of 192kbps MP3 and 96 kbps AAC.

6. Partner will provide to NASA an Audience Measurement Report on a quarterly basis to include, but is not limited to, number of listeners, length of time spent, and location of audience including city and countries.

7. Partner will seek a small number of high-profile, institutional-type sponsors to fund the production and maintenance of 3rd Rock Radio. Sponsors will receive non-commercial sponsorship identification in much the same way those on PBS/NPR are recognized. 3rd Rock Radio will be a low commercial unit environment with no more than 5 total minutes in any given hour for sponsor non-commercial sponsorship identification. The partner will choose "family friendly" sponsors, e.g. no producers or retailers of alcohol, tobacco, or other mature-themed products.

ARTICLE 4. SCHEDULE AND MILESTONES

The planned major milestones for the activities defined in the "Responsibilities" Article are as follows:

Develop programming schedule for review and approval	1 month from signature
Provide update to the plan and metrics	Quarterly

ARTICLE 5. FINANCIAL OBLIGATIONS

There will be no transfer of funds between the Parties under this Agreement and each Party will fund its own participation. All activities under or pursuant to this Agreement are subject to the availability of funds, and no provision of this Agreement shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, (31 U.S.C. § 1341).

ARTICLE 6. PRIORITY OF USE

Any schedule or milestone in this Agreement is estimated based upon the Parties' current understanding of the projected availability of NASA goods, services, facilities, or equipment. In the event that NASA's projected availability changes, Partner shall be given reasonable notice of that change, so that the schedule and milestones may be adjusted accordingly. The Parties agree that NASA's use of the goods, services, facilities, or equipment shall have priority over the use planned in this Agreement. Should a conflict arise, NASA in its sole discretion shall determine whether to exercise that priority. Likewise, should a conflict arise as between two or more non-NASA Partners, NASA, in its sole discretion, shall determine the priority as between those Partners. This Agreement does not obligate NASA to seek alternative government property or services under the jurisdiction of NASA at other locations.

ARTICLE 7. NONEXCLUSIVITY

This Agreement is not exclusive; accordingly, NASA may enter into similar agreements for the same or similar purpose with other private or public entities.

ARTICLE 8. LIABILITY AND RISK OF LOSS

A. Each Party hereby waives any claim against the other Party, employees of the other Party, the other Party's Related Entities (including but not limited to contractors and subcontractors at any tier, grantees, investigators, customers, users, and their contractors or subcontractor at any tier), or employees of the other Party's Related Entities for any injury to, or death of, the waiving Party's employees or the employees of its Related Entities, or for damage to, or loss of, the waiving Party's property or the property of its Related Entities arising from or related to activities conducted under this Agreement, whether such injury, death, damage, or loss arises through negligence or otherwise, except in the case of willful misconduct.

B. Each Party further agrees to extend this cross-waiver to its Related Entities by requiring them, by contract or otherwise, to waive all claims against the other Party, Related Entities of the other Party, and employees of the other Party or of its Related Entities for injury, death, damage, or loss arising from or related to activities conducted under this Agreement. Additionally, each Party shall require that their Related Entities extend this cross-waiver to their Related Entities by requiring them, by contract or otherwise, to waive all claims against the other Party, Related Entities of the other Party, and employees of the other Party or of its Related Entities for injury, death, damage, or loss arising from or related to activities conducted under this Agreement.

ARTICLE 9. LIABILITY AND RISK OF LOSS - PRODUCT LIABILITY

With respect to products or processes resulting from a Party's participation in an SAA, each Party that markets, distributes, or otherwise provides such product, or a product designed or produced by such a process, directly to the public will be solely responsible for the safety of the product or process.

ARTICLE 10. INTELLECTUAL PROPERTY RIGHTS - DATA RIGHTS

Information and data exchanged under this Agreement is exchanged without restrictions unless required by national security regulations (e.g., classified information) or as otherwise provided in this Agreement or agreed to by the Parties for specifically identified information or data (e.g., information or data specifically marked with a restrictive notice).

ARTICLE 11. INTELLECTUAL PROPERTY RIGHTS - INVENTION AND PATENT RIGHTS

A. "Related Entity" as used in this Invention and Patent Rights Article means a contractor, subcontractor, grantee, or other entity having a legal relationship with NASA or Partner assigned, tasked, or contracted with to perform activities under this Agreement.

B. The invention and patent rights herein apply to employees and Related Entities of Partner. Partner shall ensure that its employees and Related Entity employees know about and are bound by the obligations under this Article.

C. NASA has determined that 51 U.S.C. § 20135(b) does not apply to this Agreement. Therefore, title to inventions made (conceived or first actually reduced to practice) under this Agreement remain with the respective inventing party(ies). No invention or patent rights are exchanged or granted under this Agreement. NASA and Partner will use reasonable efforts to report inventions made jointly by their employees (including employees of their Related Entities). The Parties will consult and agree on the responsibilities and actions to establish and maintain patent protection for joint invention, and on the terms and conditions of any license or other rights exchanged or granted between them.

ARTICLE 12. USE OF NASA NAME AND NASA EMBLEMS

A. NASA Name and Initials

Partner shall not use "National Aeronautics and Space Administration" or "NASA" in a way that creates the impression that a product or service has the authorization, support, sponsorship, or endorsement of NASA, which does not, in fact, exist. Except for releases under the "Release of General Information to the Public and Media" Article, Partner must submit any proposed public use of the NASA name or initials (including press releases and all promotional and advertising use) to the NASA Associate Administrator for the Office of Communications or designee ("NASA Communications") for review and approval. Approval by NASA Office of Communications shall be based on applicable law and policy governing the use of the NASA name and initials.

B. NASA Emblems

Use of NASA emblems (i.e., NASA Seal, NASA Insignia, NASA logotype, NASA Program Identifiers, and the NASA Flag) is governed by 14 C.F.R. Part 1221. Partner must submit any proposed use of the emblems to NASA Communications for review and approval.

ARTICLE 13. RELEASE OF GENERAL INFORMATION TO THE PUBLIC AND MEDIA

NASA or Partner may, consistent with Federal law and this Agreement, release general information regarding its own participation in this Agreement as desired.

Pursuant to Section 841(d) of the NASA Transition Authorization Act of 2017, Public Law 115-10 (the "NTAA"), NASA is obligated to publicly disclose copies of all agreements conducted pursuant to NASA's 51 U.S.C. §20113(e) authority in a searchable format on the NASA website within 60 days after the agreement is signed by the Parties. The Parties acknowledge that a copy of this Agreement will be disclosed, without redactions, in accordance with the NTAA.

ARTICLE 14. DISCLAIMER OF WARRANTY

Goods, services, facilities, or equipment provided by NASA under this Agreement are provided "as is." NASA makes no express or implied warranty as to the condition of any such goods, services, facilities, or equipment, or as to the condition of any research or information generated under this Agreement, or as to any products made or developed under or as a result of this Agreement including as a result of the use of information generated hereunder, or as to the merchantability or fitness for a particular purpose of such research, information, or resulting product, or that the goods, services, facilities or equipment provided will accomplish the intended results or are safe for any purpose including the intended purpose, or that any of the above will not interfere with privately-owned rights of others. Neither the government nor its contractors shall be liable for special, consequential or incidental damages attributed to such equipment, facilities, technical information, or services provided under this Agreement or such research, information, or resulting products made or developed under or as a result of this Agreement.

ARTICLE 15. DISCLAIMER OF ENDORSEMENT

NASA does not endorse or sponsor any commercial product, service, or activity. NASA's participation in this Agreement or provision of goods, services, facilities or equipment under this Agreement does not constitute endorsement by NASA. Partner agrees that nothing in this Agreement will be construed to imply that NASA authorizes, supports, endorses, or sponsors any product or service of Partner resulting from activities conducted under this Agreement, regardless of the fact that such product or service may employ NASA-developed technology.

ARTICLE 16. COMPLIANCE WITH LAWS AND REGULATIONS

A. The Parties shall comply with all applicable laws and regulations including, but not limited to, safety; security; export control; environmental; and suspension and debarment laws and regulations. Access by a Partner to NASA facilities or property, or to a NASA Information Technology (IT) system or application, is contingent upon compliance with NASA security and safety policies and guidelines including, but not limited to, standards on badging, credentials, and facility and IT system/application access.

B. With respect to any export control requirements:

1. The Parties will comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120 through 130, and the Export Administration Regulations (EAR), 15 C.F.R. Parts 730 through 799, in performing work under this Agreement or any Annex to this Agreement. In the absence of available license exemptions or exceptions, the Partner shall be responsible for obtaining the appropriate licenses or other approvals, if required, for exports of hardware, technical data and software, or for the provision of technical assistance.

2. The Partner shall be responsible for obtaining export licenses, if required, before utilizing foreign persons in the performance of work under this Agreement or any Annex under this Agreement, including instances where the work is to be performed on-site at NASA and where the foreign person will have access to export-controlled technical data or software.

3. The Partner will be responsible for all regulatory record-keeping requirements associated with the use of licenses and license exemptions or exceptions.

4. The Partner will be responsible for ensuring that the provisions of this Article apply to its Related Entities.

C. With respect to suspension and debarment requirements:

1. The Partner hereby certifies, to the best of its knowledge and belief, that it has complied, and shall comply, with 2 C.F.R. Part 180, Subpart C, as supplemented by 2 C.F.R. Part 1880, Subpart C.

2. The Partner shall include language and requirements equivalent to those set forth in subparagraph C.1., above, in any lower-tier covered transaction entered into under this Agreement.

ARTICLE 17. TERM OF AGREEMENT

This Agreement becomes effective upon the date of the last signature below ("Effective Date") and shall remain in effect until the completion of all obligations of both Parties hereto, or five years from the Effective Date, whichever comes first.

ARTICLE 18. RIGHT TO TERMINATE

Either Party may unilaterally terminate this Agreement by providing thirty (30) calendar days written notice to the other Party.

ARTICLE 19. CONTINUING OBLIGATIONS

The rights and obligations of the Parties that, by their nature, would continue beyond the expiration or termination of this Agreement, e.g., "Liability and Risk of Loss" and

"Intellectual Property Rights"-related clauses shall survive such expiration or termination of this Agreement.

ARTICLE 20. POINTS OF CONTACT

The following personnel are designated as the Points of Contact between the Parties in the performance of this Agreement.

Management Points of Contact

NASA National Aeronautics and Space Administration
Maureen OBrien
Manager, Strategic Alliances
Mail Stop: 5R32
300 E Street SW
Washington, DC 20546
Phone: 202-358-1161
Maureen.OBrien-1@nasa.gov

RFC MEDIA, LLC
Pat Fant
CEO, RFC Media
4544 Post Oak Blvd
Suite 333
Houston, TX 77027-000
Phone: 713-256-5144
pat@rfcmedia.com

ARTICLE 21. DISPUTE RESOLUTION

Except as otherwise provided in the Article entitled "Priority of Use," the Article entitled "Intellectual Property Rights – Invention and Patent Rights" (for those activities governed by 37 C.F.R. Part 404), and those situations where a pre-existing statutory or regulatory system exists (e.g., under the Freedom of Information Act, 5 U.S.C. § 552), all disputes concerning questions of fact or law arising under this Agreement shall be referred by the claimant in writing to the appropriate person identified in this Agreement as the "Points of Contact." The persons identified as the "Points of Contact" for NASA and the Partner will consult and attempt to resolve all issues arising from the implementation of this Agreement. If they are unable to come to agreement on any issue, the dispute will be referred to the signatories to this Agreement, or their designees, for joint resolution. If the Parties remain unable to resolve the dispute, then the NASA signatory or that person's designee, as applicable, will issue a written decision that will be the final agency decision for the purpose of judicial review. Nothing in this Article limits or prevents either Party from pursuing any other right or remedy available by law upon the issuance of the final agency decision.

ARTICLE 22. MODIFICATIONS

Any modification to this Agreement shall be executed, in writing, and signed by an authorized representative of NASA and the Partner.

ARTICLE 23. ASSIGNMENT

Neither this Agreement nor any interest arising under it will be assigned by the Partner or NASA without the express written consent of the officials executing, or successors, or higher-level officials possessing original or delegated authority to execute this Agreement.

ARTICLE 24. APPLICABLE LAW

U.S. Federal law governs this Agreement for all purposes, including, but not limited to, determining the validity of the Agreement, the meaning of its provisions, and the rights, obligations and remedies of the Parties.

ARTICLE 25. INDEPENDENT RELATIONSHIP

This Agreement is not intended to constitute, create, give effect to or otherwise recognize a joint venture, partnership, or formal business organization, or agency agreement of any kind, and the rights and obligations of the Parties shall be only those expressly set forth herein.

ARTICLE 26. LOAN OF GOVERNMENT PROPERTY

The parties shall enter into a NASA Form 893, Loan of NASA Equipment, for NASA equipment loaned to Partner.

ARTICLE 27. SIGNATORY AUTHORITY

The signatories to this Agreement covenant and warrant that they have authority to execute this Agreement. By signing below, the undersigned agrees to the above terms and conditions.

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

RFC MEDIA, LLC

BY: 

Bob Jacobs

Deputy Associate Administrator, Office
of Communications

BY: 

Pat Fant

Chief Executive Officer

DATE: 1-30-20

DATE: 1/30/2020